CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(New Administrative Regulation)

907 KAR 13:015. Private duty nursing service reimbursement provisions and requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services.

Section 1. General Requirements. For the department to reimburse for a private duty nursing service under this administrative regulation, the:

(1) Provider shall meet the provider requirements established in 907 KAR 13:010; and

(2) The service shall meet the coverage and related requirements established in 907 KAR 13:010.

Section 2. Reimbursement. The department shall:

(1) Reimburse for private duty nursing services at a rate of nine (9) dollars per fifteen (15) minutes; and

(2) Not reimburse for more than:

(a) Ninety-six (96) units per recipient per twenty-four (24) hour period; or

(b) 8,000 units per twelve (12) consecutive month period per recipient.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service covered pursuant to 907 KAR 13:010 and this administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. Appeals. A provider may appeal an action by the department as established in 907 KAR 1:671.

907 KAR 13:015

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 13:015

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on February 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing February 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until February 28, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 13:015
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services. These are new services being covered by the Department for Medicaid Services (DMS) resulting from DMS's implementation of an alternative benefit plan (based on a "benchmark" or "benchmark equivalent plan") as required by the Affordable Care Act. Any state which expands its Medicaid eligibility groups to include the "expansion group" authorized by the Affordable Care Act is required to establish an alternative benefit plan for the expansion group. The expansion group is comprised primary of adults under age sixty-five (65) who are not pregnant, who have income below 133 percent of the federal poverty level, and who are not otherwise eligible for Medicaid benefits. An alternative benefit plan has to be based on a "benchmark" or "benchmark-equivalent plan." There are four (4) acceptable such plans as established by 42 C.F.R. 440.330 and 42 U.S.C. 1396u-7(b). The four (4) are:

- The benefit plan provided by the Federal Employees Health Benefit plan Standard Blue Cross/Blue Shield Provider Option;
- The state employer health coverage that is offered and generally available to state employees;
- The health insurance plan offered through the Health Maintenance Organization (HMO) with the largest insured commercial non-Medicaid enrollment in the state; and
- Secretary-approved coverage, which is a benefit plan that the secretary has determined to provider coverage appropriate to meet the needs of the population provided that coverage.

States are required to cover every service in the given alternative benefit plan and may not pick and choose services from different alternative benefit plan options.

The benchmark plan or benchmark equivalent plan is also the plan for the state's health benefit exchange. A health benefit exchange (also referred to as a health insurance exchange or "affordable insurance exchange") is mandated for each state by the Affordable Care Act. The health benefit exchange is a marketplace of health insurance plans. Individuals whose income is within the threshold of qualifying to purchase health insurance through the health benefit

exchange can do so and the government will help subsidize the cost of the individual's health insurance premiums.

Each state is required to establish a benchmark plan or benchmark equivalent plan for its health benefit exchange. States who add the Medicaid expansion group, authorized by the Affordable Care Act, to its Medicaid Program coverage are required to use the same “benchmark” or “benchmark equivalent plan” as the health benefit exchange to establish the alternative benefit plan for the Medicaid expansion group.

Kentucky selected a benchmark plan that is in the category of Health and Human Services Secretary-approved coverage. The specific plan is the Anthem Blue Cross Blue Shield Small Group Provider Preferred Option (PPO). As this plan includes private duty nursing services as a benefit, DMS is required to cover private duty nursing services.

DMS’s benefit plan will be the same for all Medicaid recipients – existing populations as well as new eligibility groups authorized or mandated by the Affordable Care Act.

DMS is promulgating this new administrative regulation in conjunction with two (2) accompanying private duty nursing service administrative regulations – 907 KAR 13:010, private duty nursing service coverage provisions and requirements and 907 KAR 13:015, reimbursement for private duty nursing services.

DMS will reimburse for private duty nursing services at a rate of nine (9) dollars per fifteen (15) minute unit and services will be limited to no more than ninety-six (96) units per twenty-four (24) hour period and 8,000 units per twelve (12) consecutive months.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish reimbursement for private duty nursing services which are being added to DMS’s array of covered services via companion administrative regulations - 907 KAR 13:005, Definitions for 907 KAR Chapter 13 and 907 KAR 13:010, Private duty nursing service coverage provisions and requirements. DMS is added private duty nursing services to its cope of covered services as explained in paragraph (a) above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with the Affordable Care Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with the Affordable Care Act.

(2) If this is an amendment to an existing administrative regulation, provide a brief

summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently thirteen (13) private duty nursing agencies licensed in Kentucky and 109 home health agencies licensed in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. A private duty nursing agency that wishes to provide services to Medicaid recipients and be reimbursed by DMS for the services will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the agency wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. A home health agency that wishes to provide Medicaid-covered private duty nurse services must obtain a private duty nursing agency licensed from the Cabinet for Health and Family Services, Office of Inspector General in accordance with 902 KAR 20:370 and also enroll with the Medicaid Program as mentioned above for private duty nursing agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). A private duty nursing agency could experience administrative cost associated with enrolling in the Medicaid Program. A home health agency which wishes to provide private duty nursing services could experience administrative costs associated with obtaining a private duty nursing agency license from the Cabinet for Health and Family Services, Office of Inspector General as well as administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A private duty nursing agency that enrolls with the Medicaid Program and provide services to Medicaid recipients in accordance with this

pursuant to this administrative regulation. DMS is establishing a rate of $9.00 per fifteen (15) minute unit for private duty nursing services. Likewise, a home health agency that takes the requisite steps will benefit by being reimbursed by the Medicaid Program for private duty nursing services at the aforementioned rate.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS estimates that its cost associated with covering private duty nursing services will be $12.87 million ($2.44 million in state funds and $10.43 million in federal funds) for state fiscal year 2014.

(b) On a continuing basis: DMS estimates that its annual cost, beginning with state fiscal year 2015, associated with covering private duty nursing services will be $17.17 million ($3.26 million in state funds and $13.91 million in federal funds.)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 13:015
Agency Contact: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396u-7(b), 42 U.S.C. 1396a(a)(30), and 42 C.F.R. 447.204.

2. State compliance standards. KRS 205.520(3) states:

"Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid programs are not required to cover private duty nursing services; however, any Medicaid program which adds, to its eligible population, the "expansion group" authorized by the Affordable Care Act, must establish an alternative benefit plan for the expansion group.

The expansion group is a new eligibility category comprised of adults below age sixty-five (65), with income below 133% of the federal poverty level, who are not pregnant, and who do not otherwise qualify for Medicaid.

An alternative benefit plan has to be based on a "benchmark" or "benchmark-equivalent package." There are four (4) acceptable such packages as established by 42 C.F.R. 440.330 and 42 U.S.C. 1396u-7(b). The four (4) are:

- The benefit package provided by the Federal Employees Health Benefit plan Standard Blue Cross/Blue Shield Provider Option;
- The state employer health coverage that is offered and generally available to state employees;
- The health insurance plan offered through the Health Maintenance Organization (HMO) with the largest insured commercial non-Medicaid enrollment in the state; and
- Secretary-approved coverage, which is a benefit package the secretary has determined to provider coverage appropriate to meet the needs of the population provided that coverage.

States are required to cover every service in the given alternative benefit plan and may not pick and choose services from different alternative benefit plan options.

The alternative benefit plan is also the plan for the state's health benefit exchange. A health benefit exchange (also referred to as a health insurance exchange or "affordable insurance exchange") is mandated for each state by the Affordable Care Act. The health benefit exchange is a marketplace of health insurance plans. Individuals whose income

is within the threshold of qualifying to purchase health insurance through the health benefit exchange can do so and the government will help subsidize the cost of the individual's health insurance premiums.

Each state is required to establish an alternative benefit plan (plan of health care services covered) for its health benefit exchange. States who add the Medicaid expansion group, authorized by the Affordable Care Act, to its Medicaid Program coverage are required to have the same alternative benefit plan for the health benefit exchange as for the Medicaid expansion group.

Kentucky selected an alternative benefit plan that is in the category of Health and Human Services Secretary-approved coverage. The specific plan is the Anthem Blue Cross Blue Shield Small Group Provider Preferred Option (PPO). As this plan includes private duty nursing services as a benefit, DMS is required to cover private duty nursing services. DMS is adopting the same benefit plan for all Medicaid recipients; thus, private duty nursing services will be covered for all Medicaid recipients who meet the coverage criteria.

42 USC 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area. 42 CFR 447.204 requires Medicaid reimbursement to be sufficient to enlist enough providers to ensure that services are available to Medicaid recipients at least to the extent that they are available to the general population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 13:015
Agency Contact: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation. As some home health agencies are owned by local governments, any such agency could be affected if it chooses to procure a private duty nursing license from the Cabinet for Health and Family Services, Office of Inspector General and enroll with the Medicaid Program.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 440.80, 42 C.F.R. 440.330, and this administrative regulation authorize the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation could generate revenue for some local governments as there are home health agencies in Kentucky owned by a local government entity. If any such entity elected to obtain a private duty nursing license from the Cabinet for Health and Family Services, Office of Inspector General and enroll with the Medicaid Program the entity could receive revenues in the form of Medicaid reimbursement for private duty nursing services. The revenues are indeterminable as the Department for Medicaid Services cannot accurately predict how many such entities would take the requisite steps.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government. The response to question (a) also applies here.
(c) How much will it cost to administer this program for the first year? DMS estimates that its cost associated with covering private duty nursing services will be $12.87 million ($2.44 million in state funds and $10.43 million in federal funds) for state fiscal year 2014.
(d) How much will it cost to administer this program for subsequent years? DMS estimates that its annual cost, beginning with state fiscal year 2015, associated with covering private duty nursing services will be $17.17 million ($3.26 million in state funds and $13.91 million in federal funds.)

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: